IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 30561 of 2006(L)

PETITIONERS:

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1. CHRISTUDAS. P., JESUS HOUSE,
   AYIRA, AYIRA P.O., PARASSALA,
   NEYYATTINKARA.

2. VILOCHANA DAS, MOHANA MANDIRAM,
   KUNNATHUKAL, KARAKONAM P.O.,
   NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DIST.

BY ADV. SRI.G.SUDHEER

RESPONDENTS:

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1. KOLLAYIL GRAMA PANCHAYAT,
   REPRESENTED BY ITS SECRETARY,
   DHANUVACHAPURAM P.O., NEYYATTINKARA.

2. THE KOLLAYIL GRAMA PANCHAYAT
   COMMITTEE, REPRESENTED BY ITS PRESIDENT
   DHANUVACHAPURAM P.O., NEYYATTINKARA.

3. A. SELVARAJ, ROSE BHAVAN,
   AYIRA, AYIRA P.O., NEYYATTINKARA TALUK,
   THIRUVANANTHAPURAM DISTRICT.

4. S. JAYACHANDRAN, RAMA MANDIRAM,
   KOTTUMOOLA, PERUMPAZHUTOOR P.O.,
   NEYYATTINKARA.

5. R. PRASANNA KUMAR, REGHUMANDIRAM,
   MANCHAVILAKOM P.O., NEYYATTINKARA.

6. K. SREEKANTAN NAIR, SREE BHAVAN,
   DHANUVACHAPURAM P.O., NEYYATTINKARA.

7. R. SURESH KUMAR, S.S. NIVAS,
VELLARADA, P.O. NEYYATTINKARA.

R1 & R2 BY ADV. SRI.B.KRISHNA MANI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.30561 OF 2006

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DATED THIS THE 1ST MARCH, 2007

J U D G M E N T

The grievance of the petitioners who had submitted tenders in response to the notification issued by the 1st respondent-Panchayat for tenders for execution of 11 public works is that the works have now been awarded by the 1st respondent to respondents 3 to 7 in what the petitioners describe as utter violation of the provisions of the Kerala Panchayat Raj Act, 1994 and the provisions of the Kerala Panchayat Raj (Execution of Public Works) Rules, 1997. Ext.P1 is copy of the tender notification. The petitioners point out that as per Ext.P1 tenders had to be submitted on 6.11.2006 before 12 noon and are to be opened at 2 p.m. on the same day. It is alleged that due to the mala fides of the respondents, the tenders were opened only on 7.11.2006 at 10 a.m. It is further alleged that after the tenders were opened, an ordinary meeting of the 2nd respondent-Committee was held in the office of the Panchayat at 12 noon and vide decision No.III dated 7.11.2006, the Committee decided to award the public works only to those contractors who quoted rates at 5% less than the estimate rate and accordingly decided to award the works to respondents 3 to 8. Ext.P2 is copy of the above decision of the 2nd

respondent. Lowest amounts were quoted in respect of 7 works by the 1st petitioner; but none of the works was awarded to him. Respondents 3 to 8 were the favourites of the Panchayat and they have been picked and chosen out of the way in violation of the provisions of law, it is so alleged. Giving details of the work, the estimate and the rates quoted by the petitioners and those quoted by the concerned respondents who have been awarded the works, the petitioners impugn Ext.P2 on various grounds and pray that a writ of mandamus quashing Ext.P2 be issued. They also pray for a writ of mandamus commanding and compelling the 1st respondent to award the work under Ext.P1 to those contractors who quoted the lowest tender in strict obedience of the Kerala Panchayat Raj (Execution of Public Works) Rules, 1997.

2. When the Writ Petition came up for admission, I issued notice on admission and ordered that finalisation of the tenders submitted by the party-respondents will be subject to the final outcome of the Writ Petition. Though respondents 1 to 3 and 5 and 6 were served with notice, the party respondents among them, i.e., respondents 3, 5 and 6 have neither entered appearance nor filed any counter affidavit.

3. The Panchayat and its Committee, respondents 1 and 2 have

filed a detailed counter affidavit. Refuting the grounds and denying the allegations, it is submitted that though as per Ext.P1, tenders were to be opened at 2 p.m. on the same day, since the Secretary of the Grama Panchayat had to attend an urgent meeting and since nobody was authorised to open the tenders, opening of tenders was adjourned to 7.11.2006. Ext.R2(a) is copy of the notice issued by the Secretary on 6.11.2006 in this regard to persons who had submitted tenders. It is clear from Ext.R2(a) that tenders will be opened at 11 a.m. on 7.11.2006. On 7.11.2006, with regard to the opening of tenders and for taking decision in respect of the percentage of the rate to be accepted, a special meeting was convened. In that meeting, some of the members observed that if public works are given to the lowest tenderers, the quality of work will be affected and the works will not be complete and satisfactory as per the instructions contained in the Tenth Five Year Plan 2002-07 (Scheme and Plan for Local Self Government Administrative Bodies). Therefore, it was suggested by the members to fix the lowest limit at 5% or 10% less than the estimate rate. Accordingly a decision was taken as per Ext.R2(b) on 7.11.2006. The said decision has been taken on the basis of the opinion of the Assistant Engineer and thereafter only respective

tenders were opened and examined. Almost all the tenders were below 15% varying upto 25% from the estimate amount. If the contract is given to the lowest tenderer, the work could not be completed as per the instructions in the Scheme and Plan for Local Self Government Administrative Bodies. Therefore the members of the Panchayat took a decision to fix 5% as the lowest limit from the estimate amount. Ext.P2 produced by the petitioners is copy of the said resolution. It is then contended that Ext.P2 decision was taken on the basis of the instructions contained in the Scheme and Plan for Local Self Government Administrative Bodies. The relevant portion of the instructions contained in the aforementioned Scheme is produced along with the counter affidavit as Ext.R2(c). Relying on clause 4(10) Chapter III of Ext.R2(c), it is contended that though the normal rule is that the tender quoting the lowest rate should be accepted, if the institution feels that the lowest tender cannot be accepted, the same need not be accepted on relevant reasons. The Panchayat fixed a minimum rate on realising that if the lowest tender is accepted, the works could not have been completed in time and that the quality of the work will not be good. There is no mala fides on the side of the Panchayat in selecting the tenders of respondents 3 to 7. The

Panchayat has only followed the procedure and the instructions contained in Ext.P2.

4. A detailed reply affidavit has been filed by the petitioners reiterating their contentions in the Writ Petition and refuting the contentions raised in the counter affidavit.

5. After hearing initial submissions, I directed the counsel for the Panchayat to make available the entire file pertaining to the works which are tendered as per Ext.P1, particularly those relating to work Nos.2, 3, 4, 5, 7, 8 and 9 –the works for which the petitioners had submitted tenders. Counsel was also directed to produce materials which would substantiate the contention of the Panchayat that works had actually commenced, particularly photographs relating to the present stage of the works which are mentioned in the Writ Petition (work awarded under SO.67/07 to one Sathikumar and the work awarded to the 4th respondent as per SO.71/07. Pursuant to that order, respondents 1 and 2 produced documents Exts.R2(d) containing copies of the relevant papers in the concerned file and Ext.R2(e) photographs relating to the work mentioned as item No.2 in Ext.P1 and also the work mentioned as item No.4 in Ext.P1. It is clear from the photographs that the work mentioned as item No.2 in Ext.P1 had

proceeded considerably, though as regards the work mentioned as item No.4 in Ext.P1 what could be noticed from the photographs is that a small quantity of construction materials has been collected in the premises.

6. Mr.G.Sudheer, counsel for the petitioner and Mr.B.Krishna Mani, counsel for the Panchayat addressed me very elaborately on the basis of the pleadings raised by their respective parties. My attention was drawn by learned counsel for the petitioner to various provisions of the Rules particularly sub-rules (12) and (14) of Rule 10 of the Kerala Panchayat Raj (Execution of Public Works) Rules, 1997 and also to Rule 5 and Rule 15 of the same Rules. Counsel drew my attention to various documents, especially Ext.P2, Ext.R2(a) and Ext.R2(b). Mr.Krishna Mani, counsel for the Panchayat also referred to sub-rule (12) of Rule 10 of the Kerala Panchayat Raj (Execution of Public Works) Rules, 1997 and would highlight the proviso to the above sub-rule. Counsel would refer to various documents placed on record, particularly Ext.R2(c), Ext.R2(b), Ext.P1 and Ext.P2.

7. Sub-Rule (12) of Rule 10 of the Kerala Panchayat Raj (Execution of Public Works) Rules, 1997 reads as follows:-

"(12) Subject to sub-rule (14) the lowest tender shall

be accepted for every public work:

Provided that where the competent authority, on a report to that effect by the Secretary endorsed by the Panchayat Engineer, is satisfied that it will not be desirable to accept the lowest tender, the next higher tender may be accepted by rejecting the lowest tender after recording the genuine reasons".

Sub-rule (14) of Rule 10 reads as follows:-

"(14) Notwithstanding anything contained in sub-rule (11), the previous sanction of the technical committee specified in sub-rule (1) of Rule 5 shall be obtained where the excess over the estimated amount is more than five per cent of such amount."

8. Ext.R2(b) is the decision of the Panchayat on item No.I in the agenda of the meeting which was held on 7.11.2006 and Ext.P2 is the decision of the Panchayat on item No.III in the agenda for the said meeting itself. A scrutiny of Ext.R2(a) and Ext.R2(b) will show that the complaint of the petitioners that Ext.P2 decision was taken by the Panchayat only after opening tenders is not sustainable. Ext.R2(b) will show that views were expressed by several members of the

Panchayat that accepting tenders quoting rates lower than the estimate will be against the interest of the Panchayat and that considering those views it was decided by the Panchayat that the issue can be decided when item No.III in the agenda is discussed in the light of the Assistant Engineer's remark. One of the arguments addressed before me by Mr.Sudheer was that the very opinion of the Assistant Engineer endorsing the view that accepting tenders quoting rates far below the estimate will be injurious to the interest of the Panchayat was taken only after the decision Ext.P2 was taken. I am not inclined to accept the above argument. Ext.R2(b) will show that the Assistant Engineer's report was available at the time when Ext.R2(b) decision was taken. The Tender Register relating to all the works tendered as per Ext.P1 contains endorsements by the Assistant Engineer that satisfactory completion of the works at rates far lower than the estimate rates (difference ranging from 10% and 24.99%) is doubtful and that the Panchayat Committee will have to take a suitable decision on the question of accepting such low tenders. The proviso to sub-rule (12) of Rule 10 of the Kerala Panchayat Raj (Execution of Public Works) Rules, 1997 will show that the decision to reject the lowest tender is to be taken by the competent authority on a report to the

effect that accepting the lowest tender will not be desirable, from the Secretary endorsed by the Panchayat Engineer. In the instant case, the Secretary has not submitted any such report. On the contrary, the Secretary was firmly of the opinion that rejecting the lowest tender will be violative of the rules. But the technical authority, the Assistant Engineer has certainly endorsed his view that it is doubtful whether the works executed on the basis of the lowest tenders will be satisfactory. The Panchayat Committee under Ext.P2 has obviously preferred the view of the Assistant Engineer.

9. Even though Ext.P2 decision has apparently been taken in the best interest of the Panchayat, there is force in the submission of Mr.Sudheer that even if the decision to reject the lowest tender can be sustained as one taken in the best interest of the Panchayat, then also, Ext.P2 is violative of the rules since it was obligatory to accept the next highest tenders and what has been actually done in this case is not that. I would have been inclined to accept the above argument of the counsel but for the fact that the documents produced by the Panchayat will show that contracts have been executed and site has been handed over to the party-respondents. At least in the case of one work, the work is very much on and in respect of another work,

materials have been collected for the commencement of the work. The works are to be completed by the 31st of March,2007 and I am of the view that this Court will not be justified in interfering with Ext.P2 at this stage invoking the extraordinary jurisdiction under Article 226 of the Constitution.

The result is that the Writ Petition fails and will stand dismissed.

(PIUS C. KURIAKOSE, JUDGE)

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